



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2012 REGULAR SESSION

HOUSE BILL NO. 385

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The following bill was reported to the Senate from the House and ordered to be printed.

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ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY Mary Sue Helm

1 AN ACT relating to coal mine safety.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔Section 1. KRS 351.010 is amended to read as follows:

4 (1) As used in this chapter, unless the context requires otherwise:

5 (a) "Adulterated specimen" means a specimen containing a substance that is not a
6 normal constituent or containing an endogenous substance at a concentration
7 that is not a normal physiological concentration;

8 (b) "Approved" means that a device, apparatus, equipment, or machinery, or
9 practice employed in the mining of coal has been approved by the
10 commissioner of the Department for Natural Resources;

11 (c) "Assistant mine foreman" means a certified person designated to assist the
12 mine foreman in the supervision of a portion or the whole of a mine or of the
13 persons employed therein;

14 (d) "Board" means the Mining Board created in KRS 351.105;

15 (e) "Commercial mine" means any coal mine from which coal is mined for sale,
16 commercial use, or exchange. This term shall in no instance be construed to
17 include a mine where coal is produced for own use;

18 (f) "Commission" means the Mine Safety Review Commission created by KRS
19 351.1041;

20 (g) "Commissioner" means commissioner of the Department for Natural
21 Resources;

22 (h) "Department" means the Department for Natural Resources;

23 (i) "Drift" means an opening through strata or coal seams with opening grades
24 sufficient to permit coal to be hauled therefrom or which is used for the
25 purpose of ventilation, drainage, ingress, egress, and other purposes in
26 connection with the mining of coal;

27 (j) "Excavations and workings" means the excavated portions of a mine;

- 1 (k) "Fire boss" (often referred to as mine examiner) means a person certified as a
2 mine foreman or assistant mine foreman who is designated by management to
3 examine a mine or part of a mine for explosive gas or other dangers before a
4 shift crew enters;
- 5 (l) "Gassy mine." All mines shall be classified as gassy or gaseous;
- 6 (m) "Illicit substances" includes prescription drugs used illegally or in excess of
7 therapeutic levels as well as illegal drugs;
- 8 (n) "Intake air" means air that has not passed through the last working place of the
9 split or by the unsealed entrances to abandoned workings and by analysis
10 contains not less than nineteen and one-half percent (19.5%) oxygen, no
11 dangerous quantities of flammable gas, and no harmful amounts of poisonous
12 gas or dust;
- 13 (o) "Licensee" means any owner, operator, lessee, corporation, partnership, or
14 other person who procures a license from the department to operate a coal
15 mine;
- 16 (p) "Medical review officer" or "MRO" means a licensed physician with
17 knowledge of substance abuse disorders, laboratory testing, chain of custody,
18 collection procedures, and the ability to verify positive, confirmed test results.
19 The MRO shall possess the necessary medical training to interpret and
20 evaluate a positive test result in relation to the person's medical history or any
21 other relevant biomedical information;
- 22 (q) "Mine" means any open pit or any underground workings from which coal is
23 produced for sale, exchange, or commercial use, and all shafts, slopes, drifts,
24 or inclines leading thereto, and includes all buildings and equipment, above or
25 below the surface of the ground, used in connection with the workings.
26 Workings that are adjacent to each other and under the same management, but
27 which are administered as distinct units, shall be considered a separate mine;

- 1 (r) "Mine foreman" means a certified person whom the licensee or superintendent
2 places in charge of the workings of the mine and of the persons employed
3 therein;
- 4 (s) "Mine manager" means a certified or noncertified person whom the licensee
5 places in charge of a mine or mines and whose duties include but are not
6 limited to operations at the mine or mines and supervision of personnel when
7 qualified to do so;
- 8 (t) "Open-pit mine" shall include open excavations and open-cut workings,
9 including but not limited to auger operations and highwall mining systems for
10 the extraction of coal;
- 11 (u) "Operator" means the licensee, owner, lessee, or other person who operates or
12 controls a coal mine;
- 13 (v) "Permissible" refers to any equipment, device, or explosive that has been
14 approved by the United States Bureau of Mines, the Mining Enforcement and
15 Safety Administration, or the Mine Safety and Health Administration and that
16 meets all requirements, restrictions, exceptions, limitations, and conditions
17 attached to the classification by the approving agency;
- 18 (w) "Preshift examination" means the examination of a mine or any portion
19 thereof where miners are scheduled to work or travel, which shall be
20 conducted not more than three (3) hours before any oncoming shift;
- 21 (x) "Return air" means air that has passed through the last active working place on
22 each split, or air that has passed through abandoned, inaccessible, or pillared
23 workings;
- 24 (y) "Serious physical injury" means an injury which has a reasonable potential to
25 cause death;
- 26 (z) "Shaft" means a vertical opening through the strata that is used in connection
27 with the mining of coal, for the purpose of ventilation or drainage, or for

- 1 hoisting men, coal, or materials;
- 2 (aa) "Slope" means an inclined opening used for the same purpose as a shaft;
- 3 (ab) "Superintendent" means the person who, on behalf of the licensee, has
- 4 immediate supervision of one (1) or more mines;
- 5 (ac) "Supervisory personnel" means a person certified under the provisions of this
- 6 chapter to assist in the supervision of a portion or the whole of the mine or of
- 7 the persons employed therein;
- 8 (ad) "Office" means the Office of Mine Safety and Licensing;~~{and}~~
- 9 (ae) "Executive director" means the executive director of the Office of Mine Safety
- 10 and Licensing;

11 (af) "Probation" means the status of a certification or license issued by the

12 Office of Mine Safety and Licensing that conditions the validity of the

13 certification or license upon compliance with orders of the Mine Safety

14 Review Commission; and

15 (ag) "Final order of the commission" means an order which has not been

16 appealed to the Franklin Circuit Court within thirty (30) days of entry, or

17 an order affirming the commission's order that has been entered by any

18 court within the Commonwealth and for which all appeals have been

19 exhausted.

20 (2) Except as the context otherwise requires, this chapter applies only to commercial

21 coal mines.

22 (3) The definitions in KRS 352.010 apply also to this chapter, unless the context

23 requires otherwise.

24 ➔Section 2. KRS 351.120 is amended to read as follows:

25 (1) The commissioner shall issue a certificate to each person who possesses the

26 qualifications required by law for mine inspector, electrical inspector, surface or

27 underground mine safety instructor, surface mine safety analyst, assistant mine

- 1 foreman, mine foreman, shotfirer, and other mining specialties as established by the
2 board, or miner who has passed the examination given by direction of the board for
3 that position, and who has met the requirements for drug- and alcohol-free status.
- 4 (2) The certificate shall be in such form as the commissioner prescribes, shall be signed
5 by the commissioner, and shall show that the holder has passed the required
6 examination and possesses the qualifications required by law for mine inspector,
7 electrical inspector, surface or underground mine safety instructor, surface mine
8 safety analyst, assistant mine foreman, mine foreman, shotfirer, and other mining
9 specialties as established by the board, or miner and is authorized to act as such.
- 10 (3) Certificates issued to mine foremen and assistant mine foremen shall be classified
11 as follows:
- 12 (a) Mine foreman certificates, authorizing the holder to act as foreman for all
13 classes of coal mines; and
- 14 (b) Assistant mine foreman certificates, authorizing the holder to act as assistant
15 foreman.
- 16 (4) Any mine foreman or assistant mine foreman may act as a fire boss or mine
17 examiner. This shall not apply to persons holding a second class mine foreman
18 certificate issued before June 16, 1972.
- 19 (5) The class of mine foreman's certificate awarded shall be determined by the board
20 according to the experience of the applicant.
- 21 (6) No certificate shall be granted to any person who does not present to the board
22 satisfactory evidence, in the form of affidavits, that the applicant has had the
23 required practical experience in underground or surface coal mines. A data sheet
24 shall be filed by each applicant showing places of employment, beginning month
25 and year and ending month and year employed by each company and list jobs
26 performed, showing at least the number of required years. Affidavit and data sheet
27 forms shall be furnished by the department. The applicant also shall submit proof

1 that he or she is drug and alcohol free. The proof shall be submitted in accordance
2 with KRS 351.182 and 351.183. For the purpose of this section, persons holding a
3 four (4) year degree in mining engineering from a recognized institution shall be
4 credited with the equivalent of two (2) years of practical experience in coal mines
5 when applying for any mine foreman or assistant mine foreman certificate. Persons
6 holding an associate degree in mining from a recognized institution shall be credited
7 with the equivalent of two (2) years' experience when applying for a mine foreman
8 certificate and one (1) year when applying for an assistant mine foreman certificate.
9 Persons desiring to use their mining engineering or mining technology degree as
10 credit for practical experience toward a mine foreman or assistant mine foreman
11 certificate shall file proof of having received their degree prior to the examination.

12 (7) Applicants for an underground mine foreman certificate shall have five (5) years'
13 practical underground coal mining experience acquired after achieving the age of
14 eighteen (18), with at least one (1) year of this experience acquired on an active
15 working section of an underground mine. Applicants for an underground assistant
16 mine foreman certificate shall have three (3) years' practical underground
17 experience acquired after achieving the age of eighteen (18), with at least one (1)
18 year of this experience acquired on an active working section of an underground
19 mine.

20 (8) Applicants for surface mine foremen certification shall have three (3) years'
21 practical surface mine experience acquired after achieving the age of eighteen (18);
22 for surface mine foreman certification with a specialty in coal extraction, at least
23 one (1) year of the required practical experience shall have been acquired from
24 direct involvement in the mining or extraction of coal at a surface mine. For a
25 surface mine foreman certification with a specialty in postmining activities, at least
26 one (1) year of the required experience shall have been acquired from direct
27 involvement in the performance of such activities at a surface or underground mine,

1 coal preparation plant, or other coal-handling facility. Notwithstanding any
 2 requirement in this subsection to the contrary, a person having three (3) years' of
 3 underground or surface mining experience shall qualify for a surface mine foreman
 4 certification with a specialty in postmining activities if the person has documented
 5 experience of at least one (1) year in the performance of these activities. Persons
 6 holding a surface mine foreman certificate prior to July 15, 1998, are not affected by
 7 this section.

8 (9) Persons possessing certificates of qualifications to act as mine inspector, mine
 9 foreman, assistant mine foreman, or fire boss prior to July 15, 1982, are not affected
 10 by this section.

11 (10) When approved by the commissioner, a person who has successfully completed any
 12 mine foreman or assistant mine foreman examination and submitted proof that he or
 13 she is drug and alcohol free in accordance with KRS 351.182 and 351.183 may be
 14 granted a temporary certification that is valid only until the board acts upon his or
 15 her certification at its next regularly scheduled meeting.

16 (11) A member of the supervisory personnel shall be present at the working section
 17 except in cases of emergencies at all times employees under his supervision are at
 18 the working section on coal-producing shifts.

19 (12) The commissioner immediately shall suspend any certification for violation of drug-
 20 and alcohol-free status or for failure or refusal to submit to a drug and alcohol test
 21 authorized by KRS 351.182, 351.183, 351.184, 351.185, and 352.180. The
 22 commissioner shall by certified mail notify the holder of the certification of his or
 23 her suspension and of the following: ~~No certification may be revoked until the~~
 24 ~~certified person has been granted adequate opportunity for a hearing before the~~
 25 ~~Mine Safety Review Commission conducted in accordance with KRS Chapter 13B.~~
 26 ~~The hearing may be initiated by the filing of a petition by the person whose~~
 27 ~~certification has been suspended by the commissioner or by the Office of Mine~~

1 Safety and Licensing under process and administrative regulations developed by the
 2 Mine Safety Review Commission in accordance with KRS 351.1041.]

3 (a) The right to pursue one (1) of the following options:

4 1. Appeal the suspension to the Mine Safety Review Commission within
 5 thirty (30) days of the notification; or

6 2. Notify the commissioner of the Department for Natural Resources or
 7 the executive director of the Office of Mine Safety and Licensing
 8 within thirty (30) days of the notification that the holder intends to be
 9 evaluated by a medical professional trained in substance treatment, to
 10 complete any prescribed treatment, and to submit an acceptable result
 11 from a drug and alcohol test as required by Section 4 of this Act.

12 (b) Failure to file an appeal or failure to notify the commissioner of the
 13 Department for Natural Resources or the executive director of the Office of
 14 Mine Safety and Licensing of the holder's intent to comply with paragraph
 15 (a)2. of this subsection within thirty (30) days of the notification shall result
 16 in the revocation of all licenses and certifications issued by the Office of
 17 Mine Safety and Licensing for a period of not less than three (3) years and
 18 the holder shall remain ineligible for any other certification issued by the
 19 Office of Mine Safety and Licensing during the revocation period.
 20 Certifications and licenses revoked under this paragraph may be reissued
 21 by:

22 1. Compliance with all training and testing requirements;

23 2. Satisfying the requirements of Sections 4 and 5 of this Act; and

24 3. Compliance with all orders of the Mine Safety Review Commission.

25 (c) The completion of the evaluation, treatment, and submission of an
 26 acceptable drug test pursuant to paragraph (a)2. of this subsection or the
 27 revocation described under paragraph (b) of this subsection shall be

1 considered a first offense.

- 2 (13) The licenses and certifications of a miner who notifies the commissioner of the
 3 Department for Natural Resources or the executive director of the Office of Mine
 4 Safety and Licensing of his or her intent to comply with subsection (12)(a)2. of
 5 this section shall remain suspended until the miner has provided proof of the
 6 evaluation and successful completion of any prescribed treatment and has
 7 submitted a negative drug and alcohol test as required by Section 4 of this Act to
 8 the Office of Mine Safety and Licensing. The drug and alcohol test shall be taken
 9 no more than thirty (30) days prior to the submission of the proof required by this
 10 section. Upon receipt and review of the proof by the Office of Mine Safety and
 11 Licensing, the miner's licenses and certifications shall be restored. In the event
 12 that the miner fails to successfully complete the evaluation, treatment, and drug
 13 test within one hundred twenty (120) days of his or her notification pursuant to
 14 subsection (12)(a)2. of this section, the miner's licenses and certifications issued
 15 by the Office of Mine Safety and Licensing shall be revoked for a period
 16 prescribed under subsection (8) of Section 7 of this Act. The one hundred twenty
 17 (120) day time period set out in this section shall be extended upon proof that the
 18 miner is complying with the recommendations of the medical professional~~[A~~
 19 ~~miner whose certification has been suspended or revoked for violating the drug and~~
 20 ~~alcohol free condition of certification may reapply for certification with the Mining~~
 21 ~~Board, provided that he or she has successfully passed a drug and alcohol test~~
 22 ~~meeting the requirements in KRS 351.182 and 351.183 within thirty (30) days prior~~
 23 ~~to reapplication and has fulfilled the terms of final orders entered by the Mine~~
 24 ~~Safety Review Commission].~~
 25 (14) If the suspension described in subsection (12) of this section occurs following the
 26 miner's first offense as described in this section or Section 6 of this Act, the
 27 notification sent to the miner shall not include the option of notifying the Office

of Mine Safety and Licensing of the miner's intent to seek an evaluation and treatment. The miner shall only have the right to appeal the suspension to the Mine Safety Review Commission within thirty (30) days of notification. If the miner fails to appeal the suspension, the penalty shall be assessed according to subsection (8)(b) or (c) of Section 7 of this Act.

→Section 3. KRS 351.122 is amended to read as follows:

(1) In lieu of an examination prescribed by law or regulation, the board may enter into a reciprocal agreement with another state regarding the certification of miners. The board may, pursuant to a reciprocal agreement, issue to any person holding a certificate issued by another state a certificate permitting him or her to perform similar tasks in the Commonwealth if:

(a)[(1)] The board finds that the requirements for certification in the other state are substantially equivalent to those of Kentucky;

(b)[(2)] The person passes only the applicable part of the examination with regard to Kentucky law which is uniquely different from the other state;

(c)[(3)] The person has submitted proof, in accordance with KRS 351.182, that he or she is drug and alcohol free;

(d)[(4)] The person's retraining is sufficient to meet Kentucky requirements; and

(e)[(5)] The person's certification in Kentucky or in any other state has not been suspended, revoked, or probated.

(2) Upon receipt of notice from a reciprocal state of a disciplinary action relating to any of the certifications or licenses issued to a miner who also holds corresponding licenses or certifications issued by the Office of Mine Safety and Licensing, the commissioner shall impose analogous sanctions against the miner's Kentucky licenses or certifications. These sanctions shall terminate upon proof of compliance with the orders from the reciprocal state.

→Section 4. KRS 351.182 is amended to read as follows:

- 1 (1) All applicants for certification as new miners and all initial applicants for all other
2 certifications provided for in this chapter shall provide proof of drug- and alcohol-
3 free status prior to certification in accordance with the provisions of this section.
- 4 (2) Proof of drug- and alcohol-free status shall be provided in one (1) of two (2)
5 methods:
 - 6 (a) By participation in a drug and alcohol testing program offered by the Office of
7 Mine Safety and Licensing and paid for by the applicant, in accordance with
8 this section and KRS 351.183; or
 - 9 (b) By the submission of drug and alcohol test results from other sources, as
10 provided in KRS 351.183(2).
- 11 (3) If a newly certified miner gains employment in the coal industry, the initial
12 employer shall reimburse the certified miner for the cost of one (1) drug and alcohol
13 test required by this section and KRS 351.183, 351.184, and 351.185.
- 14 (4) If the applicant is currently certified in any category other than that for which he is
15 applying by the Office of Mine Safety and Licensing and the applicant is currently
16 employed in the coal industry, the applicant's employer shall reimburse the
17 applicant for the cost of one (1) drug and alcohol test required by this section and
18 KRS 351.183, 351.184, and 351.185.
- 19 (5) The fee charged to an applicant for the drug and alcohol tests offered by the Office
20 of Mine Safety and Licensing shall not exceed the actual cost of collection, analysis,
21 and medical review officer (MRO) review.
- 22 (6) The Office of Mine Safety and Licensing shall provide, at each site of examinations
23 for the certifications provided for in Chapter 351, a breath alcohol testing device
24 and a person certified in the operation of the breath alcohol testing device. The
25 breath alcohol test shall be administered prior to examination to determine the
26 applicant's alcohol-free status. The Office of Mine Safety and Licensing may satisfy
27 the requirement to furnish an alcohol testing device and certified personnel by:

- 1 (a) The use of equipment and appropriately certified personnel of the Office of
- 2 Mine Safety and Licensing;
- 3 (b) A memorandum of agreement with state or local police agencies for the
- 4 provision of equipment and appropriately trained personnel at the examination
- 5 site; or
- 6 (c) Inclusion of breath alcohol testing as part of the contract to provide drug
- 7 testing and collection services set out in KRS 351.183(1).
- 8 (7) A breath alcohol concentration of .04 shall be the maximum acceptable level of
- 9 concentration for participation in the examination and subsequent certification.
- 10 (8) Except for an alternative testing protocol provided for post-accident victims under
- 11 KRS 352.180(5) to (7), the minimum testing protocol acceptable for the
- 12 establishment of drug-free status for certification under KRS Chapter 351 shall be
- 13 at least a ten (10)~~an eleven (11)~~ panel urine test that shall include testing for the
- 14 following substances:
- 15 (a) Amphetamines;
- 16 (b) Cannabinoids/THC;
- 17 (c) Cocaine;
- 18 (d) Opiates;
- 19 (e) Phencyclidine (PCP);
- 20 (f) Benzodiazepines;
- 21 (g) Propoxyphene;
- 22 (h) Buprenorphine~~[Methaqualone]~~;
- 23 (i) Methadone;
- 24 (j) Barbiturates; and
- 25 (k) The remaining panels to be used in the urine test shall be set by order of the
- 26 Mine Safety Review Commission no later than June 1 of each
- 27 year~~[Synthetic narcotics]~~.

➔Section 5. KRS 351.183 is amended to read as follows:

(1) The Office of Mine Safety and Licensing may contract with qualified companies to provide the collection of samples and administer the required drug and alcohol tests. The contract may provide that the collection of samples or testing be subcontracted, except that the contract shall require:

(a) The contractor and any subcontractors to follow all standards, procedures, and protocols set forth by the United States Department of Health and Human Services' Substance Abuse and Mental Health Services Administration (SAMHSA) for the collection and testing required by KRS 351.182 and this section;

(b) The contractor's or subcontractor's drug-testing protocol shall be a ten (10) [an eleven (11)] panel test described in KRS 351.182(8) and any other test required by order of the Mine Safety Review Commission; and

(c) The contractor or the subcontractor shall provide a medical review officer (MRO) who shall:

1. Possess the ability and medical training necessary to verify positive confirmed test results and evaluate those results in relation to an applicant's medical history or other biomedical information; and
2. Follow all procedures outlined in the SAMHSA Medical Review Officer Manual.

(2) The executive director of the Office of Mine Safety and Licensing may accept proof of drug- and alcohol-free status from other sources whose tests conform to the requirements set forth in KRS 351.182(7) and (8) and in accordance with KRS 351.182(2)(b) under the following conditions:

(a) An applicant shall submit a request for acceptance of his or her drug- and alcohol-free status to the executive director accompanied by pass/fail results of a drug and alcohol test taken within thirty (30) days prior to the request;

1 and

2 (b) The test results shall have been performed by laboratories certified in
3 accordance with the National Laboratory Certification Program (NLCP) by the
4 United States Department of Health and Human Services Administration's
5 SAMHSA and in accordance with subsection (1) of this section.

6 (3) The Office of Mine Safety and Licensing shall maintain and publish annually a list
7 of certified specimen collection services and testing laboratories from which it will
8 accept data.

9 ➔Section 6. KRS 351.184 is amended to read as follows:

10 (1) The results of any testing performed by the Office of Mine Safety and Licensing
11 shall be given to the applicant at the time of his or her notification of the granting or
12 denial of certification.

13 (2) Certification of an applicant shall be denied if any one (1) or more of the following
14 occur:

15 (a) The applicant's positive drug test results for any of the~~[-eleven-(11)]~~
16 substances either listed in KRS 351.182(8) or otherwise required to be tested
17 for by order of the Mine Safety Review Commission are deemed to fail by a
18 medical review officer;

19 (b) The applicant's blood alcohol level is above .04 concentration at the time of
20 testing;

21 (c) The applicant's test results demonstrate the submission of an adulterated
22 specimen; or

23 (d) The applicant refuses to submit to a drug or alcohol test as required by KRS
24 351.182.

25 (3) (a) Any applicant who is denied certification due to the results of the drug and
26 alcohol testing required by KRS 351.182 may:~~[be retested again, at his or her~~
27 ~~expense, within ten (10) days of notification of the results of the initial test.]~~

1. Appeal to the Mine Safety Review Commission within thirty (30) days of receiving the notification required under subsection (12) of Section 2 of this Act; or

2. Notify the commissioner of the Department for Natural Resources or the executive director of the Office of Mine Safety and Licensing within thirty (30) of receiving the notification required under subsection (12) of Section 2 of this Act that the applicant intends to be evaluated by a medical professional trained in substance abuse treatment, to complete any prescribed treatment, and to submit an acceptable result from a drug and alcohol test as required by Section 4 of this Act.

(b) Failure to file an appeal or failure to notify the commissioner of the Department for Natural Resources or the executive director of the Office of Mine Safety and Licensing of his or her intent to comply with paragraph (a)2. of this subsection within thirty (30) days of the notification shall result in the revocation of all licenses and certifications issued by the Office of Mine Safety and Licensing for a period of not less than three (3) years and the holder shall remain ineligible for any other certification issued by the Office of Mine Safety and Licensing during the revocation period. Certifications and licenses revoked under this paragraph may be reissued by:

1. Compliance with all training and testing requirements;

2. Satisfying the requirements of Sections 4 and 5 of this Act; and

3. Compliance with all orders of the Mine Safety Review Commission.

(c) For the purposes of this subsection, the completion of evaluation, treatment, and submission of an acceptable drug test pursuant to paragraph (a)2. of this subsection or the revocation described under paragraph (b) of this

1 subsection shall be considered a first offense.

- 2 (4) The licenses and certifications of a miner who notifies the commissioner of the
 3 Department for Natural Resources or the executive director of the Office of Mine
 4 Safety and Licensing of his or her intent to comply with subsection (3)(a)2. of this
 5 section shall remain suspended until the miner has provided proof of the
 6 evaluation and successful completion of any prescribed treatment and has
 7 submitted a negative drug and alcohol test as required by Section 4 of this Act to
 8 the Office of Mine Safety and Licensing. The drug and alcohol test shall be taken
 9 no more than thirty (30) days prior to the submission of the proof required by this
 10 section. Upon receipt and review of the proof by the Office of Mine Safety and
 11 Licensing, the miner's licenses and certifications shall be restored. In the event
 12 that the miner fails to successfully complete the evaluation, treatment, and drug
 13 test within one hundred twenty (120) days of the notification required under
 14 subsection (12) of Section 2 of this Act, the miner's licenses and certifications
 15 issued by the Office of Mine Safety and Licensing shall be revoked for a period
 16 prescribed under subsection (8) of Section 7 of this Act. The one hundred twenty
 17 (120) day time period set out in this section shall be extended upon proof that the
 18 miner is complying with the recommendations of the medical professional~~[If an~~
 19 ~~applicant fails a drug and alcohol retest as provided in subsection (3) of this section~~
 20 ~~and the applicant is denied certification, the applicant may reapply for certification~~
 21 ~~only after an evaluation by a medical professional trained in substance abuse~~
 22 ~~treatment and the successful completion of prescribed treatment and an acceptable~~
 23 ~~result from a drug and alcohol test as required by KRS 351.182. Proof of the~~
 24 ~~evaluation and the successful completion of the prescribed treatment shall be shown~~
 25 ~~at the time of application].~~
 26 (5) If the denial described in subsection (3) of this section occurs following the
 27 miner's first offense as described in this section or Section 2 of this Act, the miner

shall not have the option of notifying the Office of Mine Safety and Licensing of his or her intent to comply with subsection (3)(a)2. of this section. The miner shall only have the right to appeal the denial to the Mine Safety Review Commission within thirty (30) days of notification. If the miner fails to appeal the denial, the penalty shall be assessed according to subsection (8)(b) or (c) of Section 7 of this Act~~[Any applicant who is denied certification due to the results of the drug and alcohol testing required by KRS 351.182 may file an appeal of the denial with the Mine Safety Review Commission within thirty (30) days of the notification of the results of the test].~~

➔Section 7. KRS 351.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of KRS 351.315 to 351.375 or any administrative regulation, determination, or order promulgated in accordance with KRS 351.315 to 351.375 shall be subject to a civil fine not less than two hundred fifty dollars (\$250) nor more than five thousand dollars (\$5,000) for each violation.
- (2) Any person who willfully violates any of the provisions of KRS 351.315 to 351.375 or any administrative regulation, determination, or order promulgated in accordance with KRS 351.315 to 351.375 which has become final shall be guilty of a Class A misdemeanor.
- (3) Any person who violates any of the provisions of KRS 351.330(16) shall be guilty of a Class B misdemeanor.
- (4) Any person who violates any of the provisions of KRS 351.345(2) shall be guilty of a Class D felony.
- (5) Any operator who fails to obtain his license as required by KRS 351.175 shall be guilty of a Class A misdemeanor as defined in KRS 532.090. Each day the mine is operated without a license constitutes a separate offense. Venue for the offenses shall lie in the county in which the offense occurred.
- (6) Any operator operating a mine with knowledge that the mine has been placed under

1 a valid closure order pursuant to KRS 351.175 shall be guilty of a Class D felony.
 2 Jurisdiction shall lie in the Circuit Court of the county in which the offense
 3 occurred.

- 4 (7) Any blasting operation that results in the death or serious physical injury of a person
 5 may be subject to a civil fine not more than twenty thousand dollars (\$20,000). For
 6 the purposes of this subsection, "serious physical injury" means an injury which has
 7 a reasonable potential to cause death.


8 (8) Any person who fails a drug or alcohol test required by KRS 351.182, 351.183,
 9 351.184, 351.185, or 352.180 shall be subject to the following penalties if an
 10 appeal to the Mine Safety Review Commission is chosen and the appeal is not
 11 successful:


12 (a) A first offense shall result in probation, suspension, or combination of both
 13 as well as other conditions and time constraints as ordered by the Mine
 14 Safety Review Commission. During this time, the person shall be ineligible
 15 for any license or certification issued by the Office of Mine Safety and
 16 Licensing. All licenses and certifications shall be restored upon compliance
 17 with the orders of the Mine Safety Review Commission. The failure to
 18 pursue an appeal will result in revocation of all licenses or certifications
 19 issued by the Office of Mine Safety and Licensing for three (3) years.

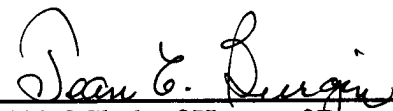
20 (b) A second offense shall result in the revocation of all certifications and
 21 licenses issued by the Office of Mine Safety and Licensing for a period of
 22 five (5) years. During this time, the person shall be ineligible for any license
 23 or certification issued by the Office of Mine Safety and Licensing.
 24 Certifications and licenses revoked under this provision may be reissued by:
 25 1. Compliance with all training and testing requirements;
 26 2. Satisfying the requirements of Section 4 and 5 of this Act; and
 27 3. Compliance with all orders of the Mine Safety Review Commission.

1 (c) A third offense shall result in the permanent revocation of all licenses and
2 certifications issued by the Office of Mine Safety and Licensing. The person
3 shall be permanently ineligible for licenses and certifications issued by the
4 Office of Mine Safety and Licensing.

5 (d) The Mine Safety Review Commission shall not have the authority to
6 reconsider any order permanently revoking a miner's license or
7 certifications issued by the Office of Mine Safety and Licensing if the
8 commission's order is final unless, at the time of the entry of the order, the
9 miner was incarcerated or hospitalized, or the miner did not receive actual
10 notice of the motion or other filing seeking permanent revocation, or did
11 not actually receive notification by the commissioner of the Department for
12 Natural Resources pursuant to Section 2 of this Act.


Speaker-House of Representatives


President of Senate

Attest: 
Chief Clerk of House of Representatives

Approved 
Governor

Date 4-11-12